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UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER TECHNOLOGIES,
INC. AND OTTOMOTTO LLC'S RESPONSE
TO WAYMO'S PRECIS IN SUPPORT OF
ITS REQUEST TO FILE A MOTION FOR
RELIEF BASED ON DEFENDANTS'
LITIGATION MISCONDUCT**

Date: TBD
Time: TBD
Ctroom: 8, 19th Floor
Judge: Honorable William H. Alsup
Trial Date: February 5, 2018

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

Nothing in Waymo's 50-page offer of "proof" with five binders of exhibits warrants any sanction. Yet Waymo wants to file another motion to substitute sanctions for evidence—because it cannot prove its trade secret claims. That request should be denied. This case should be tried on its merits instead of unwarranted inferences based on irrelevant innuendo. The issues Waymo raises have been briefed extensively, and the Jacobs allegations do not provide any reason to brief them further. As Uber's response to Waymo's Offer of Proof will make clear, discovery into the Jacobs allegations has confirmed that there is nothing relevant to the eight trade secrets at issue. Enough is enough. It is time for Waymo to stop whining, and try its case.

I. TERMINATING SANCTIONS ARE NOT WARRANTED.

Waymo came to this Court with trumpets blaring, declaring that it had slam dunk evidence of trade secret theft. When discovery confirmed that was not true, Waymo decided to raise a series of excuses, based on false allegations of discovery and other abuses, designed to have this Court bail them out. This Court should not do so. Waymo obtained extensive discovery into the Jacobs allegations—17 depositions and over 16,000 pages of documents. None of this turned up any wrongdoing connected to Waymo, much less the specific trade secrets at issue. As Uber's response will show, no one in Uber's self-driving group engaged in the misconduct alleged by Jacobs, including the use of non-attributable devices, anonymous servers, or knowingly improper attorney-client privilege designations. There is simply no evidence that Waymo was prejudiced in any way because any relevant evidence was hidden or destroyed. FED. R. CIV. P. 37(e)(1).

The same is true of ephemeral messaging. Uber employees were instructed that if they were subject to a litigation hold, they should not use ephemeral communications to discuss anything covered by the hold. (Declaration of Camila Tapernoux Exhibits ("Exs.") A-D.) There is no evidence that ephemeral messaging was used for discussing anything relevant to this case. (Exs. C, E.) Moreover, Waymo employees have used ephemeral messaging as a matter of course since the company's founding, and Google employees have used it for a decade. (Ex. F.) Google's decision to default to ephemeral messaging arose because it [REDACTED] [REDACTED] (Ex. G.) Google has even argued in prior litigation (1) that a default setting to not retain chats comported with [REDACTED]

1 [REDACTED] and was [REDACTED]

2 (Ex. H, ¶ 8), as well as (2) that Google’s default “off-the-record” setting for its chat was not
 3 improper and did not support a finding of spoliation, because such chats were akin to “hallway
 4 conversation[s]” and the proper avenue for discovery regarding these messages was depositions.
 5 (Ex. I, *Function Media v. Google*, No. 2007-CV-279, No. 483 at 155:17-156:12 (E.D. Tex. Oct.
 6 21, 2010) (post-trial motions hearing on spoliation).) Like Uber, Google has instructed
 7 employees subject to an existing litigation hold to change individual chat settings to “on the
 8 record” for communications subject to a litigation hold. (Ex. H; Ex. I at 154:15-20.)

9 The precedent on which Waymo relies does not support sanctions. To the contrary, the
 10 relevant case law highlights that Waymo’s request is improper. First, a request for terminating
 11 sanctions may only be granted upon a finding of willfulness, bad faith, or fault—a standard
 12 Waymo tellingly fails to identify, let alone provide evidence of. *See Brookhaven Typesetting*
 13 *Serv., Inc. v. Adobe Sys., Inc.* 332 Fed. App’x 387, 389 (9th Cir. 2009) (“Where the drastic
 14 sanctions of dismissal or default are imposed ... the losing party’s noncompliance must be due to
 15 willfulness, fault, or bad faith.”) (affirming that terminating sanctions were not warranted);
 16 *Mitchell v. Acumed, LLC*, No. 11-CV-00752 SC (NC), 2012 WL 761705, at *2 (N.D. Cal. Mar. 8,
 17 2012 (“sanction orders taking the plaintiff’s allegations as established and awarding judgment on
 18 that basis are the most severe penalty To justify the imposition of such a harsh sanction, the
 19 court must find the violations were due to willfulness, bad faith, or fault of the party.”) (internal
 20 citations omitted); *Mech. Mktg., Inc. v. Sixxon Precision Mach. Co.*, No. C 11-1844 EJD PSG,
 21 2013 WL 1563251, at *2-3 (N.D. Cal. Apr. 12, 2013) (denying sanctions that “would have the
 22 effect of entering partial judgment for [plaintiff], at least on the issue of damages[,]” noting that a
 23 “terminating sanction is considered very severe and should only be imposed if the party acted
 24 with willfulness, bad faith, and fault.”) (internal citation omitted); *Network Appliance, Inc. v.*
 25 *Bluearc Corp.*, No. C 03-5665 MHP, 2005 WL 1513099, at *3 (N.D. Cal. June 27,
 26 2005), *aff’d*, 205 F. App’x 835 (Fed. Cir. 2006) (“the imposition of preclusive sanctions may be
 27 tantamount to dismissal of a plaintiff’s claims or entry of default judgment against a
 28 defendant. Under those circumstances . . . a showing of bad faith is required.”) (internal citation

omitted); *Nuance Commc'ns, Inc. v. ABBYY Software House*, No. C 08-02912 JSW (MEJ), 2012 WL 5904709, at *2 (N.D. Cal. Nov. 26, 2012) (denying jury instruction to take as established that defendant copied trade dress, which would be “tantamount to [granting] a directed verdict...”).

Waymo cannot make the requisite showing of bad faith. *See, e.g., Network Appliance*, 2005 WL 1513099 at *1 (denying sanctions upon finding of no bad faith where defendant did not produce responsive damages documents earlier because “its [CFO] had concluded that ... [they] were not responsive”). Even if it could, its request would fail upon consideration of the five factor balancing test. The “key factors are prejudice and availability of lesser sanctions.” *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). As discussed above, Waymo has not suffered prejudice, especially to the extent reflected in cases where this factor weighed in favor of granting sanctions. Waymo has had the opportunity to conduct full discovery into the evidence at issue, which courts in this district agree is sufficient to remedy any potential prejudice from belated discovery. *Mitchell* 2012 WL 761705 at *3 (finding no prejudice from discovery delay because trial was continued); *Nuance Commc'ns, Inc. v. ABBYY Software House*, No. C 08-02912 JSW MEJ, 2012 WL 5904709, at *3 (N.D. Cal. Nov. 26, 2012) (denying motion for issue preclusion sanctions due to late productions where “a discovery extension would have alleviated any prejudice that was caused by Defendants’ malfeasance, and, most importantly, permitted the Court and a jury to resolve Plaintiff’s trade dress claims on the merits.”). Waymo has also not suffered prejudice because, as Uber’s Response to Waymo’s Offer of Proof will show, the evidence at issue was of minimal if any relevance. *Keithley v. Homestore.com, Inc.*, No. C-03-04447 SI (EDL), 2009 WL 55953, at *3 (N.D. Cal. Jan. 7, 2009) (denying sanctions due to finding of no prejudice where late-produced documents had “little if any relevance to [the] case”).

The cases on which Waymo relies to argue for prejudice are readily distinguishable. In *Valley Engineers Inc. v. Electric Engineering Co.*, the evidence at issue was a “smoking gun.” 158 F.3d 1051, 1054 (9th Cir. 2000). Here, as this Court has repeatedly observed, there is no smoking gun. No one in ATG used non-attributable devices or anonymous servers. While there was limited gathering of publicly-available information about Waymo, Waymo points to no evidence of any trade secret misappropriation—because there was none. (Tapernoux Decl., Exs.

J-M (Russo at 20:18-21:7, 37:20-38:18; Henley at 106:16-20, 107:15-23, 108:4-6; Nocon at 45:9-19; Gicinto at 145:12-19, 208:15-24, 281:16-282:16).) Additionally, the *Valley Engineers* court found that the severity of the defendant's conduct in hiding and lying about the document intentionally throughout the litigation warranted severe sanctions because it "so damage[d] the integrity of the discovery process that there [could] never be assurance of proceeding on the true facts." 158 F.3d at 1059. Similarly, in *Fair Housing of Marin v. Combs*, defendant "misrepresented to both counsel and to the district court that the documents did not exist" when in fact "[t]he documents were in Combs' one-bedroom apartment." 285 F.3d 899, 905-906 (2002) There is no such evidence here. Waymo also relies on *Fair Housing of Marin* and *Henry* for the proposition that a last-minute production does not cure prejudice. (Dkt. No. 2472 at 2-3.) But, unlike here, the parties in those cases did not have the opportunity to conduct discovery into the late-produced evidence. Waymo obtained extensive follow-up discovery here, and the cases cited above make clear that such an opportunity remedies any potential prejudice.

The availability of less drastic sanctions also weighs against granting terminating sanctions. Waymo's case, *Alexsam, Inc. v IDT Corp.*, 715 F.3d 1336 (Fed. Cir. 2013), applies a far more lenient standard from the Fifth Circuit. Further, in that case, the defendant had already received less drastic sanctions, yet continued to not comply with its obligations; it was then twice warned of the risk of future sanctions before the court granted terminating sanctions. *Id.* at 1344.

Waymo misleadingly claims that one of the continuances "has been determined to have resulted from the intentional concealment of evidence." (Dkt. No. 2472-3 at 2:19 (Waymo Precis).) There is no citation to any such "determination," nor could there be. And, the public policy favoring disposition of cases on their merits strongly outweighs the remaining factors here. Waymo should not be permitted to bypass the utter lack of evidence of misappropriation of the eight trade secrets at issue via a sanction based on meritless and exaggerated allegations.

II. REMEDIAL JURY INSTRUCTIONS ARE NOT NECESSARY.

This issue has already been extensively briefed. (*See* Dkt Nos. 1591-4, 2240-4, and 2804.) As noted there, and as will be discussed further in Uber's response to Waymo's Offer of Proof, Uber has not violated any Court Orders or destroyed evidence. Remedial jury instructions

1 are not warranted. Waymo should try its case on the merits and should not be permitted to use
2 irrelevant allegations to influence the jury into finding wrongdoing where there is none.

3 **III. EVIDENTIARY SANCTIONS ARE NOT WARRANTED.**

4 Waymo points to no specific concealment of evidence that has compromised its
5 evaluation of Uber's independent development such that evidentiary sanctions are warranted.
6 First, Uber substantially complied with its logging obligation. (Dkt. 1591-4 at 2 (Uber conducted
7 over 170 interviews, reviewed over 25,000 documents and spent over 700 hours preparing the
8 "LiDAR log," and voluntarily included references not just to LiDAR but to lasers, lenses, and
9 point clouds, as well as communications where others may have mentioned LiDAR and related
10 concepts to Mr. Levandowski.). Second, Uber legitimately asserted privilege over the Stroz
11 materials, and it was not in a position to unilaterally waive the privilege when Mr. Levandowski
12 continued to assert it. *United States v. Gonzalez*, 669 F.3d 974, 982 (9th Cir. 2012) ("the case law
13 is clear that one party to a JDA cannot unilaterally waive the privilege for other holders."). And
14 in another half-truth, Waymo complains that it did not receive the Stroz materials "until after the
15 close of fact discovery," but fails to mention that Mr. Levandowski, not Uber, appealed this
16 Court's ruling on that issue. Waymo also conveniently omits that it received ample discovery
17 into the Stroz diligence after the Federal Circuit ruled. Lastly, in a final half-truth, Waymo
18 complains that it was not able to question two Uber engineers (Mr. Haslim and Mr. Boehmke)
19 about the Stroz materials. But they fail to mention that they only requested to depose a different
20 engineer, Mr. Gruver, about the Stroz materials. Waymo never asked to depose Mr. Haslim or
21 Mr. Boehmke after the Stroz report was released.

22 **IV. ADDITIONAL TIME AT TRIAL IS NOT WARRANTED.**

23 Waymo should not be given additional time at trial to do nothing more than present more
24 baseless allegations of discovery misconduct in an effort to mislead the jury into thinking Waymo
25 has an actual case. Nothing has emerged from the Jacobs letter that warrants inclusion at trial, as
26 discussed above and as will be detailed in Uber's response to Waymo's Offer of Proof. The
27 remaining factors to which Waymo points—the due diligence process and the Ottomotto and Tyto
28 transactions—were known when the Court set the initial time allocations that Waymo agreed to.

1 Dated: January 14, 2018

MORRISON & FOERSTER LLP

2
3 By: /s/ Arturo J. González

4 ARTURO J. GONZÁLEZ

5 Attorneys for Defendants
6 UBER TECHNOLOGIES, INC. and
7 OTTOMOTTO LLC
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Attorneys for Defendants
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF CAMILA
TAPERNOUX IN SUPPORT OF
DEFENDANTS UBER
TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S RESPONSE TO
WAYMO'S PRECIS IN SUPPORT OF
ITS REQUEST TO FILE A MOTION
FOR RELIEF BASED ON
DEFENDANTS' LITIGATION
MISCONDUCT**

Trial Date: February 5, 2018

1 I, Camila Tapernoux, declare as follows:

2 1. I am an attorney with the law firm of Morrison & Foerster LLP. I am a member in
3 good standing of the Bar of the State of California. I make this declaration based on personal
4 knowledge and, if called as a witness, I could and would testify competently to the matters set
5 forth herein. I make this declaration in support of Defendants Uber Technologies, Inc. and
6 Ottomotto LLC's ("Uber") Response to Waymo's Precis in Support of Its Request to File a
7 Motion for Relief Based on Defendants' Litigation Misconduct.

8 2. Attached hereto as **Exhibit A** are relevant pages from the deposition of
9 Craig Clark, taken on December 22, 2017.

10 3. Attached hereto as **Exhibit B** are relevant pages from the deposition of
11 Kevin Maher, taken on December 12, 2017.

12 4. Attached hereto as **Exhibit C** are relevant pages from the 30(b)(6) deposition of
13 Randy Haimovici, taken on December 21, 2017.

14 5. Attached hereto as **Exhibit D** are relevant pages from the deposition of Salle Yoo,
15 taken on December 14, 2017.

16 6. Attached hereto as **Exhibit E** are relevant pages from the deposition of Lior Ron,
17 taken on December 12, 2017.

18 7. Attached hereto as **Exhibit F** are relevant pages from the deposition of
19 Scott Johnston, taken on December 14, 2017.

20 8. Attached hereto as **Exhibit G** is a true and correct copy a document produced in
21 this litigation bearing Bates numbers WAYMO-UBER-00145156—WAYMO-UBER-00145157.

22 9. Attached hereto as **Exhibit H** is a true and correct copy a document produced in
23 this litigation bearing Bates numbers WAYMO-UBER-00145114—WAYMO-UBER-00145127.

24 10. Attached hereto as **Exhibit I** is a true and correct copy of the transcript of Motions
25 Hearing in *Function Media, LLC v. Google, Inc.*, No. 2007-CV-279, No. 483 (E.D. Tex. Oct. 21,
26 2010).

27 11. Attached hereto as **Exhibit J** are relevant pages from the deposition of
28 Edward Russo, taken on December 20, 2017.

14. Attached hereto as **Exhibit M** are relevant pages from the 30(b)(6) deposition of Nick Gicinto, taken on December 21, 2017.

/s/ Camila Tapernoux
 CAMILA TAPERNOUX

ATTESTATION OF E-FILED SIGNATURE

I, Arturo J. Gonzalez, am the ECF User whose ID and password are being used to file this Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Camila Tapernoux has concurred in this filing.

Dated: January 14, 2018

/s/ Arturo J. González

ARTURO J. GONZÁLEZ

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 3:17-cv-00939-WHA

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.; OTTOMOTTO
LLC; OTTO TRUCKING LLC,

Defendants.

-----/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF CRAIG CLARK
FRIDAY, DECEMBER 22, 2017

Reported by:

Kelli Ann Willis, RPR, CRR

JOB No. 2780742

PAGES 1 - 387

Page 1

1 Q. How many such discussions? 12:16:26

2 A. I don't know. Twenty. 12:16:28

3 Q. And what instructions did you give 12:16:29

4 employees regarding when to use a particular 12:16:31

5 communications platform as opposed to another 12:16:34

6 communications platform? 12:16:36

7 A. If you are -- if you are on legal hold, 12:16:37

8 you can't use ephemeral communications. 12:16:40

9 Q. Is that the only instruction that you ever 12:16:44

10 provided to Uber employees regarding the use of 12:16:46

11 ephemeral communications? 12:16:52

12 A. I don't know. To the best of the 12:16:59

13 recollection, that's the one that sticks out I would 12:17:04

14 tell people. 12:17:06

15 Q. Did you ever instruct employees to use 12:17:09

16 ephemeral communications platforms in order to avoid 12:17:12

17 the retention of such communications? 12:17:16

18 A. Absolutely not. 12:17:18

19 Q. I think I asked you about the retention -- 12:17:38

20 the default retention of UChat, and I think you said 12:17:44

21 you don't know what the default retention period 12:17:47

22 was; is that correct? 12:17:50

23 A. I don't know for sure. It has changed, 12:17:52

24 but I think at one point it was maybe seven days. 12:17:54

25 But I'm not -- but I'm not certain. 12:17:59

C E R T I F I C A T E

STATE OF FLORIDA)

: ss

COUNTY OF MIAMI-DADE)

I, KELLI ANN WILLIS, a Registered
Professional, Certified Realtime Reporter and
Notary Public within and for The State of
Florida, do hereby certify:

That CRAIG CLARK, the witness whose
deposition is hereinbefore set forth was duly
sworn by me and that such Deposition is a true
record of the testimony given by the witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of December, 2017.



KELLI ANN WILLIS, RPR, CRR

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,
Plaintiff,

vs.

Case No. 17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;
OTTOMOTTO, LLC; OTTO
TRUCKING LLC,
Defendants.

****CONFIDENTIAL - ATTORNEYS' EYES ONLY****

VIDEO DEPOSITION OF KEVIN MAHER
San Francisco, California
Tuesday, December 12, 2017
Volume I

REPORTED BY:
REBECCA L. ROMANO, RPR, CSR No. 12546
JOB NO. 2771230
PAGES 1 - 299

1 statement with him during this conversation? 10:33:43

2 A. No.

3 Q. Do you recall having conversations with
4 any other Uber employees about ephemeral
5 communications, prior to receiving the legal hold 10:33:52
6 notice?

7 A. I'm sure I spoke about it with Matt near
8 the time when I started.

9 Q. Can you recall anything about that
10 conversation? 10:34:03

11 A. I recall Matt saying that -- referring to
12 the security team that we are a -- primarily a
13 Wickr shop. Meaning that that is the standard
14 communication tool of the security team.

15 Q. Anything else? 10:34:23

16 A. No.

17 Q. Now, with regard to this conversation
18 that you had with Mr. Clark after you received the
19 legal hold notice, what do you recall discussing
20 with him? 10:34:39

21 A. I recall him either ending an email or
22 telling our team that we could not discuss anything
23 relevant to the legal hold using Wickr.

24 Q. So with regard to your use of Wickr, how
25 did that change after you received the legal hold? 10:35:00

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

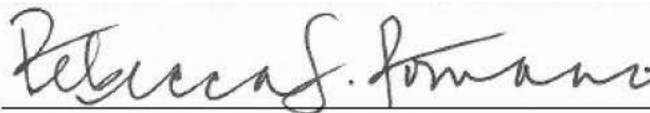
4 That the foregoing proceedings were taken
before me at the time and place herein set forth;
5 that any witnesses in the foregoing proceedings,
6 prior to testifying, were administered an oath;
7 that a record of the proceedings was made by me
using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is true record of the testimony given.

10 Further, that if the foregoing pertains to the
11 original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript [] was [x] was not requested.

I further certify I am neither financially
14 interested in the action nor a relative or employee
15 of any attorney or any party to this action.

16 IN WITNESS WHEREOF, I have this date
17 subscribed my name.

18
19 Dated: December 13, 2017
20
21
22

23 
24

Rebecca L. Romano, RPR,
25 CSR. No 12546

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.; 17-cv-00939-WHA

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF UBER TECHNOLOGIES, INC.

30(b)(6) REPRESENTATIVE - RANDY HAIMOVICI

San Francisco, California

Thursday, December 21, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2779670

PAGES 1 - 190

Page 1

1 gave me an example of how they are used. He 10:13:46
2 described the purpose. And -- and mentioned that
3 based on his knowledge, they were only used by
4 people in the security department.

5 Q. When you say that you discussed with 10:14:04
6 Mr. Gicinto how nonattributable devices are used,
7 what did he say in terms of how they were used?

8 A. In the same way I just described.

9 Q. Okay. Nothing addition- -- nothing
10 beyond what you've already -- 10:14:15

11 A. Not that I recall.

12 Q. Okay. And in terms of discussing the
13 purpose of using nonattributable devices, did he
14 say anything further than what you've already
15 provided? 10:14:23

16 A. Not that I recall. It was just basically
17 what I told you.

18 Q. You said you spoke with Eric Meyhofer?

19 A. I did.

20 Q. What you did and Eric Meyhofer discuss? 10:14:34

21 A. So Eric and I talked about use of
22 nonattributable devices. And he confirmed that
23 they are not used by ATG. As I'm sure you know,
24 he's the head of ATG.

25 We talked about the use of ephemeral 10:14:47

1 communications, and he confirmed that his use of 10:14:50
2 ephemeral communications were limited to social
3 reasons almost exclusively, but that there are
4 times when he's talking about performance issues
5 for employees, where he's used it, that he's never 10:15:03
6 used ephemeral communications to discuss anything
7 related to this case.

8 That he has an understanding of what and
9 how the attorney-client privilege should be used.
10 And he's adhered to the knowledge he was given and 10:15:18
11 the training he was given.

12 Q. And in your conversations with
13 Mr. Meyhofer, were you talking about his use
14 specifically or ATG more generally?

15 A. His use specifically -- well, when you 10:15:33
16 say "use," just tell me what you mean.

17 Q. So let me -- let me break it down.

18 A. Okay.

19 Q. So for -- for nonattributable devices,
20 you said that Mr. Meyhofer told you that they're 10:15:42
21 not used by anyone in ATG; is that right?

22 A. That's correct.

23 Q. Okay. When you were talking about
24 ephemeral communications, did you discuss with
25 Mr. Meyhofer whether they are used by others in ATG 10:15:50

1 business. 11:27:57

2 Q. As of when?

3 A. Same -- same time, the September time

4 frame. I don't remember the exact date, but in the

5 same time frame we have been discussing. 11:28:04

6 Q. Okay. So prior to this policy change in

7 September 2017, it was permissible for Uber

8 employees to use Telegram for business purposes?

9 A. I don't know if I'd say it that broadly.

10 It was used, and I -- I think it was authorized. 11:28:17

11 Q. Okay. WickrMe, you said that was a

12 non-enterprise version?

13 A. That's right. WickrMe.

14 Q. WickrMe. Okay.

15 That's a non-enterprise version of Wickr, 11:28:31

16 correct?

17 A. As stated, yes.

18 Q. Okay. And it is not -- is that -- is use

19 of WickrMe currently permitted for business

20 purposes? 11:28:41

21 A. No.

22 Q. Okay. Prior to September 2017, was use

23 of WickrMe permitted for business purposes?

24 A. For some businesses purposes, yes.

25 Q. When you say, "for some business 11:28:52

1 purposes," were there specific business purposes it 11:28:53
2 was --

3 A. I don't know if they were specific, but I
4 know people on the security team used it.

5 Q. Was there any guidance provided to 11:29:02
6 employees about when it was appropriate to use
7 WickrMe for business purposes?

8 A. Well, there was -- there's guidance on
9 when not to use it and -- but it doesn't just apply
10 to WickrMe. It applies to all chat applications. 11:29:16
11 And the guidance was not to use it to discuss
12 topics that are subject to a litigation hold.

13 Q. And that was a guidance for all chat
14 applications --

15 A. Yes. 11:29:31

16 Q. -- is that what you said?

17 And so that, that guidance to not use
18 these chat applications for subjects covered by a
19 litigation hold, that would really only come into
20 play once there was some reason to have a 11:29:49
21 litigation hold --

22 A. That is correct.

23 Q. -- correct?

24 Okay. So, for example, the -- Uber
25 acquired Otto well before this lawsuit was filed. 11:29:59

1 look at the bottom of Exhibit 9729 -- 11:38:55

2 A. Okay.

3 Q. -- the paragraph that says, "Uber Chat

4 Applications are the following" --

5 A. Yes. 11:39:05

6 Q. -- and does that list uChat and

7 Google Hangouts as authorized chat applications?

8 A. Well, it -- it -- it identifies them in

9 there, and then it talks about them on the next

10 page. But, yes. 11:39:18

11 Q. And this paragraph says that, "All other

12 chat applications, including but not limited to

13 Wickr, Telegram, Signal, WeChat, and Snapchat, are

14 not Uber Chat Applications and employees are

15 prohibited from using these for business 11:39:28

16 communications," correct?

17 A. That is correct as of the date this

18 policy went into place in September, true.

19 Q. And prior to this date, employees were

20 not prohibited from using any of -- any of those 11:39:41

21 communications applications listed there?

22 A. Well, except for the fact they were

23 prohibited from using them if they wanted to talk

24 about things that were subject to a litigation

25 hold. 11:39:53

1 | only when appropriate. 02:41:14

2 Q. Did you ask him about any training that's
3 been provided to the ATG group about
4 attorney-client privilege designations?

5 A. I didn't because I don't -- I don't know 02:41:23

6 that he would know about that. I did not.

7 Q. If we go back to Topic 2 -- and I don't
8 know if you want to get it in front of you or
9 not --

10	A. Right.	02:41:42
----	-----------	----------

11 Q. -- but it asks about defendants' use
12 of -- use of methods or strategies to conceal facts
13 from discovery by external parties and litigation
14 or government investigations.

15	And then it lists, including improper	02:41:50
16	attorney-client and other privileged designations,	
17	ephemeral or encrypted communications,	
18	nonattributable devices or anonymous servers.	

19	In preparing for your testimony today,	
20	did you ask anybody about other methods or	02:42:07
21	strategies to conceal facts from discovery by	
22	external parties?	

23 A. I focused on the ones you identified.

24 Q. So in your discussions with Mr. Meyhofer,
25 you didn't ask him whether there are other methods 02:42:22

1 or strategies that the ATG group uses to conceal 02:42:25
2 facts from discovery by external parties?

3 A. I didn't feel the need to ask him because
4 it was clear in my discussion with him that any
5 attempt to conceal information from discovery in 02:42:36
6 litigation was unacceptable.

7 Q. Who said that, you or him?

8 A. That's my summary of our discussion. I
9 didn't feel the need to ask him, was there anything
10 else other than the three things identified in your 02:42:50
11 notice. Because in whatever words he used, he made
12 it clear to me that doing so would be unacceptable.

13 Q. So he told --

14 A. Regardless of methodology.

15 Q. And when you spoke with Mr. Gicinto, did 02:43:00
16 you ask him about the use of methods or strategies
17 to conceal facts from discovery other than those
18 specifically outlined in the topic?

19 A. Not in way you are phrasing it, no. I
20 don't recall that coming up. 02:43:15

21 Q. I'm sorry, I don't understand what you're
22 saying, not in -- not in the way you're phrasing
23 it.

24 A. I didn't discuss that topic with him the
25 way you phrased it in your question. 02:43:23

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath;
8 that a record of the proceedings was made by me
9 using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: December 22, 2017

22
23 

24 Rebecca L. Romano, RPR,
25 CSR. No 12546

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

vs.

Case

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING LLC,
Defendants.

_____/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF SALLE YOO

VOLUME II

THURSDAY, DECEMBER 14, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2771310

Pages 163 - 495

Page 412

1 A. I'm not sure. 15:50:06

2 Q. You're aware of one hold?

3 A. I'm aware of at least one.

4 Q. Does Uber's litigation hold include

5 language regarding ephemeral chat platforms? 15:50:14

6 A. As I sit here, I don't know.

7 Q. Are you aware of any language in the hold
8 document that concerns ephemeral messaging systems?

9 A. I don't know. But the policy of the
10 company was that if you were on hold, that you did 15:50:34
11 not talk about those topics on any sort of chat app.

12 MR. VERHOEVEN: I'll move to strike as
13 nonresponsive everything after "I don't know."

14 BY MR. VERHOEVEN:

15 Q. When did the Uber litigation hold go into 15:50:57
16 effect with respect to this lawsuit?

17 A. I don't have the exact date, but it would
18 be shortly after the lawsuit was filed and we
19 received notice of it.

20 Q. In February, March, April? 15:51:10

21 A. No, I don't think it was April. I would
22 think it was either in February or early March,
23 depending on when it was implemented.

24 Q. Did Uber implement a litigation hold in
25 connection with the Stroz investigation? 15:51:21

1 FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2 I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

3 That, prior to being examined, the witness
4 named in the foregoing deposition was by me duly
sworn pursuant to Section 30(f)(1) of the Federal
5 Rules of Civil Procedure and the deposition is a
true record of the testimony given by the witness;

6 That said deposition was taken down by me in
shorthand at the time and place therein named and
7 thereafter reduced to text under my direction;

8 --X-- That the witness was requested to
review the transcript and make any changes to the
9 transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil
10 Procedure;

11 ----- No changes have been provided by the
witness during the period allowed;

12 ----- The changes made by the witness are
13 appended to the transcript;

14 ----- No request was made that the
transcript be reviewed pursuant to Section 30(e) of
15 the Federal Rules of Civil Procedure.

16 I further declare that I have no interest in
the event of the action.

17 I declare under penalty of perjury under the
18 laws of the United States of America that the
foregoing is true and correct.

19 WITNESS my hand this 15th day of December,
20 2017.

21
22
23 
24

25 ANRAE WIMBERLEY, CSR NO. 7778

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

vs.

Case No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING LLC,
Defendants.

_____/

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30(b)(6) VIDEOTAPED DEPOSITION OF LIOR RON

VOLUME II

TUESDAY, DECEMBER 12, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2771228B

Pages 306 - 434

Page 306

1 will work and be most convenient for you. 17:26:43

2 But you know, look. You closed the last
3 deposition, and I'll give you some wiggle room if
4 you made a mistake. It's okay.

5 MR. SCHMIDT: All right. I'm going to move on 17:26:53
6 because this is wasting my time.

7 MR. RABIN: So how do you want to proceed?

8 MR. SCHMIDT: I'm going to ask the questions
9 that I think need to be asked. And if the witness
10 refuses to answer the questions, then we'll take it 17:27:07
11 up later as appropriate.

12 I think the transcript is very clear on
13 what's going on here.

14 BY MR. SCHMIDT:

15 Q. Sir, was Slack used at Ottomotto in 17:27:21
16 conjunction with the negotiations that led to the
17 acquisition of Ottomotto by Uber?

18 A. No. I do not believe we've used Slack to
19 communicate with Uber on any matters related to the
20 negotiation. 17:27:41

21 Q. Were any forms of communication that you
22 consider ephemeral communications used during the
23 negotiations that led to the acquisition of
24 Ottomotto by Uber?

25 A. No, not to the best of my knowledge. 17:27:58

1 Q. What methods of communications were used 17:42:28
2 regarding the negotiations for Uber's acquisition of
3 Ottomotto?

4 A. Again, the topic here is around ephemeral,
5 and so are you asking in my personal capacity sort 17:42:43
6 of all the communication channels?

7 Q. I just want to know whatever communication
8 channels you can recall that were used to
9 communicate about the acquisition of Ottomotto by
10 Uber. 17:43:00

11 MR. RABIN: You can answer. If it's ephemeral,
12 you can do it in your corporate capacity. If it's
13 not ephemeral, you can do it in your individual
14 capacity.

15 THE WITNESS: Right. So I don't think -- in my 17:43:08
16 corporate capacity, I don't think any of the
17 communication methods were ephemeral, meaning sort
18 of used in communication channels that are designed
19 to not store messages by default.

20 In my personal capacity I believe there 17:43:22
21 was e-mail and text messages used, if I recall
22 correctly.

23 MR. RABIN: And let me just stop one second.

24 So just for the record, I'm allowing you
25 to proceed on this basis so as not to impede it. 17:43:36

1 A. Well, as I've conversed with James, I 18:16:43
2 don't believe he used it, and he does -- to the best
3 of my understanding and his understanding, nobody on
4 his team has used that tool as well.

5 And as we've discussed before, Anthony got 18:16:56
6 an invitation to that tool, but I'm not aware of any
7 communication whatsoever that Anthony had on the
8 tool at all, and on the tool specifically relating
9 to LiDAR.

10 Q. Did you ask Mr. Levandowski if he 18:17:15

11 communicated on Wickr about LiDAR development?

12 MR. RABIN: Objection; form.

13 THE WITNESS: I have not asked Anthony directly
14 that question. But it is my understanding that he
15 got an invitation from the ThreatOps team as a 18:17:33
16 follow-up to our meeting on market data, and it had
17 nothing to do with LiDAR development whatsoever.
18 That's my understanding.

19 BY MR. SCHMIDT:

20	Q. What's that understanding based on?	18:17:46
----	--	----------

21 A. It's based on the dates of that invitation
22 being sent in the time frame of our discussion with
23 the ThreatOps team.

24	It's based on the fact that the invitation	
25	came on the same e-mail to the two of us, and only	18:18:04

1 the two of us, and not to any other sort of LiDAR 18:18:08
2 team members.

3 And it came -- and it stems from my
4 understanding that the LiDAR team has not used Wickr
5 for their job. 18:18:22

6 And I believe I haven't seen names of
7 LiDAR team members on that list of Wickr users at
8 Uber, but I'm happy to take another look to refresh
9 my memory and be definitive on that answer.

10 Q. I'm sorry, I just don't have time to help 18:18:40
11 you prepare for your corporate testimony. So if
12 you're not able to say --

13 MR. RABIN: Counsel, please be respectful to
14 the witness.

15 MR. SCHMIDT: Counsel, don't make speaking 18:18:50
16 objections.

17 MR. RABIN: I'm not. I'm asking you to please,
18 as an officer of the Court, be respectful in the
19 deposition to the witness. What you're doing is not
20 respectful. 18:18:58

21 MR. SCHMIDT: All right. I'm moving on.
22 You're wasting my time again.

23 MR. RABIN: And don't tell me I'm wasting your
24 time. I'm trying to ask you to be respectful.
25 Okay? 18:19:05

1 FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2 I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

3 That, prior to being examined, the witness
4 named in the foregoing deposition was by me duly
sworn pursuant to Section 30(f)(1) of the Federal
5 Rules of Civil Procedure and the deposition is a
true record of the testimony given by the witness;

6 That said deposition was taken down by me in
shorthand at the time and place therein named and
7 thereafter reduced to text under my direction;

8 --X--- That the witness was requested to
review the transcript and make any changes to the
9 transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil
10 Procedure;

11 ----- No changes have been provided by the
witness during the period allowed;

12 ----- The changes made by the witness are
13 appended to the transcript;

14 ----- No request was made that the
transcript be reviewed pursuant to Section 30(e) of
15 the Federal Rules of Civil Procedure.

16 I further declare that I have no interest in
the event of the action.

17 I declare under penalty of perjury under the
18 laws of the United States of America that the
foregoing is true and correct.

19 WITNESS my hand this 13th day of December,
20 2017.

21
22
23
24 

25 ANRAE WIMBERLEY, CSR NO. 7778

EXHIBIT F

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

EXHIBIT G

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

EXHIBIT H

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

EXHIBIT I

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 FUNCTION MEDIA, LLC,) (
5) (CIVIL DOCKET NO.
6) (2:07-CV-279-CE
7 VS.) (MARSHALL, TEXAS
8) (
9 GOOGLE, INC, ET AL) (AUGUST 19, 2010
10) (9:00 A.M.

11 MOTIONS HEARING
12 BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM
13 UNITED STATES MAGISTRATE JUDGE

14
15 APPEARANCES:

16
17 FOR THE PLAINTIFF: (See attached sign-in sheet.)

18 FOR THE DEFENDANTS: (See attached sign-in sheet.)
19

20 COURT REPORTER: MS. SHELLY HOLMES, CSR
21 Deputy Official Court Reporter
22 2593 Myrtle Road
23 Diana, Texas 75640
24 (903) 663-5082

25 (Proceedings recorded by mechanical stenography,

transcript produced on a CAT system.)

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I N D E X

August 19, 2010

Page

Appearances	1
Hearing	3
Court Reporter's Certificate	180

1 LAW CLERK: All rise.

2 THE COURT: Please be seated.

3 All right. We've got a hearing on some
4 post-trial motions in Case 2:07-CV-279, Function Media
5 against Google.

6 What says the plaintiff?

7 MR. TRIBBLE: Your Honor, Max Tribble. I'm
8 here with Joe Grinstein, Justin Nelson, Stacy Schultz,
9 Warren Burns, Calvin Capshaw, and Chris Bunt. Plaintiff
10 is ready to proceed, Your Honor.

11 THE COURT: All right. For Google?

12 MR. DEFRANCO: Good morning, Your Honor.
13 Ed DeFranco for Defendant Google. I'm here with Patrick
14 Curran and Amy Candido. Also with me is Melissa Smith,
15 Your Honor, and John Labar from Google.

16 THE COURT: All right.

17 MR. DEFRANCO: Mr. Verhoeven sends his
18 apologies, Your Honor. He had a long-planned family
19 vacation in between trials, or otherwise he would be
20 here.

21 THE COURT: All right. Well, you can do his
22 time for him and --

23 MR. DEFRANCO: That's why I'm here, Your
24 Honor.

25 THE COURT: I'm being facetious. Well, good

1 So it's not the case where we just sort of
2 switched everybody to off the record and said, "You
3 know, oh, well, that's our new policy." Those people
4 were told to preserve instant messages that were
5 relevant by putting them on the record.

6 It's in the record that Theresa Beaumont's
7 first declaration makes it clear, Google can't change --
8 the setting has to be the same -- the default setting
9 across the entire, like, 30,000 Google employees. So
10 it's not an instance where we could have just said,
11 "Okay, let's put Sergey Brin or Susan Wojcicki or
12 whomever's IMs on -- on the record default and everybody
13 else is on off the record." Everybody's had to either
14 be on or off.

15 You know, and for larger data management
16 and policy reasons, Google made the decision to switch
17 to off the record -- and because they couldn't put those
18 people individually on -- on the record, they told them
19 for pertinent communications related to this litigation
20 hold, you need to put them on the record.

21 Now, those witnesses --

22 THE COURT: How was that communicated?

23 MS. CANDIDO: Excuse me?

24 THE COURT: How was that communicated to
25 these employees?

1 MS. CANDIDO: I believe that that was
2 communicated to those employees -- at least in the first
3 instance, with the policy change, as part of the
4 announcement of the policy change. And then I think
5 also in connection with document -- so the
6 communications they have with individuals at the
7 beginning of a lawsuit about collecting documents and
8 things like that, I believe those were orally -- well, I
9 don't want to reveal privilege, but I -- I think they
10 were additional reinforcements about policy --

11 THE COURT: But you swore out an affidavit
12 that said that.

13 MS. CANDIDO: Yes, there -- there's a sworn
14 affidavit right here that they were told that.

15 THE COURT: I just was interested in how
16 that was communicated.

17 MS. CANDIDO: Well, I know that it was
18 communicated in connection with the policy change when
19 it took place.

20 You know, I just want to refer, too, to that
21 Malletier case where the Court specifically says that
22 a -- the claim that a defendant was required to log
23 every chat was, quote, akin to a demand that a party to
24 litigation install a system to monitor and record phone
25 calls coming into its office on the hypothesis that some

1 of them may contain relevant information.

2 There's no such requirement. And really
3 it's just the same hypothesis that -- that Mr. Nelson is
4 putting forth here that there might -- there just --
5 there might be these chats or by putting chats off the
6 record, it enables people to have secret chats about
7 things that aren't -- well, I mean, you can have a
8 hallway conversation, you can have a phone call
9 conversation. It's no different than that.

10 And to the extent they want discovery with
11 respect to those things, that's what depositions are
12 for. At depositions, they were free to ask all these
13 witnesses, "What did you communicate with people in the
14 hallway about X subject or did you have telephone
15 communications about Y subject? Did you have instant
16 message communications? What did you say? When did you
17 have them?" I mean, they can ask all the same questions
18 they could ask about phone calls or hallway
19 communications with respect to -- to IM messages.

20 And I think it's important to -- to note
21 that despite the existence of two snippets of IMs that
22 were pasted into e-mails that are non -- that are in
23 some ways substantive, Mr. Brin, Ms. Wojcicki -- they've
24 all testified that they use IMs very different than what
25 plaintiff is hypothesizing.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,)
Plaintiff,)
v.) Case No.
UBER TECHNOLOGIES, INC.;) 3:17-cv-00939-WHA
OTTOMOTTO LLC;)
OTTO TRUCKING,)
Defendants.)
-----)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF EDWARD RUSSO
WEDNESDAY, DECEMBER 20, 2017

REPORTED BY:
PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 2771335

PAGES 1 - 367

1 surveillance? Do you know? 08:17:37

2 A. I don't. 08:17:38

3 Q. Did you ever see a report about 08:17:39

4 it? 08:17:40

5 A. I did not. 08:17:41

6 Q. Did you talk to anyone about it? 08:17:41

7 A. Nick Gicinto told me, you know, 08:17:43

8 this was something that had taken place, and 08:17:45

9 I -- I forget the dates, but it would have been 08:17:47

10 in the spring, I guess, of 2016. 08:17:49

11 Q. Okay. 08:17:51

12 And what was the context of him 08:17:53

13 telling you that? Why -- why was he telling 08:17:54

14 you that? 08:17:56

15 A. Just to inform me on some of the 08:17:57

16 stuff that had -- the team had done prior to my 08:17:59

17 arrival. 08:18:02

18 Q. Other than the surveillance of 08:18:09

19 [REDACTED] that happened on two separate occasions 08:18:10

20 -- 08:18:10

21 A. Right. 08:18:13

22 Q. -- and the surveillance of Waymo 08:18:14

23 in Arizona and the surveillance of [REDACTED] that 08:18:16

24 you mentioned, are there any other instances 08:18:19

25 that you're aware of, whether you're personally 08:18:20

1 aware of it or because you heard from someone 08:18:23
2 else, of any surveillance that Uber did of 08:18:25
3 competitors? 08:18:29
4 A. No. 08:18:29
5 Q. You haven't heard anything else; 08:18:30
6 right? 08:18:31
7 A. No. 08:18:31
8 Q. And explain to me the context or 08:18:35
9 the purpose of the due diligence surveillance 08:18:38
10 that was done in connection with [REDACTED]. 08:18:41
11 A. It was my understanding that ATG 08:18:46
12 was [REDACTED] 08:18:48
13 [REDACTED] 08:18:52
14 [REDACTED] 08:18:57
15 ATG's -- Mr. Levandowski, Mr. Ron 08:19:03
16 had asked for certain -- for [REDACTED] to provide 08:19:06
17 certain things so they could assess the 08:19:07
18 technology to determine whether this would be a 08:19:09
19 wise business decision on -- on Uber's part. 08:19:11
20 Apparently [REDACTED] was not 08:19:14
21 forthcoming to their -- to their liking. 08:19:16
22 They -- they felt they were -- they lacked the 08:19:20
23 information they needed. So they asked us if 08:19:23
24 we could videotape one of their cars so they 08:19:25
25 could get a sense of how good the technology 08:19:28

1 Q. Of 2017? 08:33:57

2 A. Yes. 08:33:57

3 Q. The surveillance that happened at 08:34:07

4 Waymo in Arizona, can you tell me how that 08:34:09

5 arose? 08:34:11

6 A. To be perfectly honest, I'm less 08:34:15

7 clear on the genesis of that. After we did the 08:34:17

8 [REDACTED] surveillance and provided the videos, 08:34:20

9 about a week later, if I remember correctly, 08:34:25

10 Mr. Gicinto called me and said that 08:34:29

11 Mr. Levandowski and Mr. Ron would be interested 08:34:31

12 in similar videos of the Waymo cars in Arizona. 08:34:34

13 Q. You said a week after the [REDACTED] 08:34:40

14 surveillance. Were you referring to the 08:34:42

15 March -- 08:34:44

16 A. Yes. 08:34:45

17 Q. -- 2017 surveillance? 08:34:45

18 A. Yeah, the March. Because we -- we 08:34:47

19 did the Waymo videotaping in mid April. 08:34:49

20 Q. What did Mr. Gicinto tell you the 08:34:59

21 purpose of getting videos of the Waymo cars in 08:35:03

22 Arizona was? 08:35:06

23 A. As I recall, it was just that 08:35:08

24 Mr. Levandowski and Mr. Ron were interested in 08:35:11

25 videos of Waymo cars. I -- I was unaware of a 08:35:14

1 bigger purpose behind it. 08:35:17

2 Q. And what did you do in connection 08:35:19

3 with doing that surveillance of Waymo cars in 08:35:21

4 Arizona? 08:35:23

5 A. Same as I just described with 08:35:25

6 [REDACTED]. Jake Nocon, myself went down. One of 08:35:27

7 the [REDACTED] came down or contractors came 08:35:31

8 down, and we videotaped the Waymo cars. 08:35:35

9 Q. How long did that project last? 08:35:51

10 A. Three or four days. 08:35:53

11 Q. Did you get any feedback from 08:35:57

12 Mr. Ron or Mr. Levandowski or Mr. Gicinto or 08:36:02

13 anyone else about the video that you took 08:36:06

14 there? 08:36:07

15 A. As I recall, the -- I mean, they 08:36:11

16 were happy we had the video, but I mean, there 08:36:13

17 was no specific -- specific comments that I 08:36:15

18 remember. 08:36:17

19 Q. Do I understand correctly that 08:36:23

20 from August of 2016 when you were hired at Uber 08:36:24

21 and March of 2017, you're not aware of any 08:36:28

22 surveillance activities that Uber engaged? 08:36:32

23 A. Other than the one I just -- we 08:36:37

24 talked about that took place before my being 08:36:39

25 hired there, right, yeah. I'm -- 08:36:41

1 Q. You're referring to [REDACTED]? 08:36:42
2 A. The [REDACTED], yeah. 08:36:45
3 Q. Other than that, you're not aware 08:36:46
4 of anything? 08:36:47
5 A. I'm not aware of anything. 08:36:48
6 [Discussion off the record.] 08:37:01
7 Q. I should have given you that 08:37:02
8 caveat at the beginning. 08:37:04
9 A. It's okay. 08:37:06
10 Q. In terms of the research that you 08:37:24
11 mentioned of third parties -- third-party 08:37:26
12 competitors -- 08:37:28
13 A. Yes. 08:37:31
14 Q. -- did you or are you aware of 08:37:31
15 anyone else at Uber ever attempting to gather 08:37:34
16 that research by speaking to individuals who 08:37:39
17 were employed at these third parties? 08:37:43
18 A. Say that question again now. 08:37:50
19 Q. Sure. 08:37:51
20 Did you or are you aware of anyone 08:37:56
21 else at Uber ever attempting to gather research 08:37:59
22 about competitors of Uber by speaking to 08:38:04
23 individuals who were employed at those 08:38:08
24 competitors? 08:38:11
25 A. No. 08:38:14

1 Witness my hand this 21st day
2 of December 2017.

3
4 
5

6 PAUL J. FREDERICKSON, CCR, CSR

7 WA CCR 2419 CA CSR 13164

8 Expiration date: March 31, 2018
9

EXHIBIT K

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.;

3:17-cv-00939-WHA

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

-----/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MATHEW HENLEY

FRIDAY, DECEMBER 22, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2771361B

PAGES 1 - 145

Page 1

1 that I'm limiting this to collection based on these 16:44:23
2 objectives.

3 I'm simply asking you right now, based on
4 this product -- this project, which was -- the
5 autonomous project was Zoo, I believe you said that 16:44:35
6 you understood that there was research that was
7 going to be done on some of the leading companies in
8 that space, including Google or Waymo --

9 A. Yes.

10 Q. -- and that you believe that the code name 16:44:52
11 Giraffe refers to Google or Waymo.

12 A. Um-hum.

13 Q. So I think that's been established by your
14 testimony.

15 A. Yes. 16:45:02

16 Q. Now, in light of that project, are you
17 aware of Uber uncovering any confidential
18 information of Waymo's?

19 A. I'm not aware of any confidential
20 information. 16:45:17

21 Q. Are you aware of any trade secret
22 information of Waymo's being uncovered in connection
23 with this effort to conduct research into the
24 autonomous space?

25 A. "Trade secret" is something I need help 16:45:29

1 with the definition on specifically. 16:45:33

2 Q. Well, do you have a concern or belief that
3 there was some type of information of Waymo's that
4 was uncovered? Because I can just work backwards.

5 Why don't you tell me all the information 16:45:55
6 related to Waymo that you believe was uncovered as a
7 result of these efforts.

8 A. All of our efforts against Waymo that I'm
9 aware of occurred in public space.

10 Q. And when you say "public space," you're 16:46:12
11 referring to surveillance?

12 A. Yeah, observation.

13 Q. So observation of vehicles?

14 A. Yes.

15 Q. And so you're not aware of any other 16:46:19
16 research activity or surveillance or investigative
17 tool that was utilized against Waymo other than this
18 physical surveillance of vehicles; is that correct?

19 A. Yeah.

20 Q. So anything that you observed would have 16:46:32
21 been the observation of these vehicles in the public
22 space?

23 A. Yes, driving around.

24 Q. And based on that, are you aware of having
25 discovered any trade secrets of Waymo? 16:46:43

1 A. Again, I don't know the definition of 16:46:46
2 "trade secret," but if my previous statement agrees
3 with that, then, yes.

4 Q. Certainly no one ever told you that they
5 discovered any Waymo trade secrets; is that correct? 16:47:05

6	A. Correct.
---	-------------

7 Q. Let me ask you to take a look at the
8 fourth paragraph of this -- on page 625. The last
9 sentence of the fourth paragraph reads, "Little, if
10 any, protected data or technical information has 16:48:21
11 leaked into the public domain."

12	Do you see that?
----	------------------

13	A. The last sentence?
----	-----------------------

14 MR. UMHOFFER: Right there (indicating).

15	BY MR. LYONS:	16:48:35
----	---------------	----------

16 Q. What do you understand the term "protected
17 data" to refer to?

18 A. If I'm thinking of protected data, I'm
19 thinking of data that is being secured or contained
20 within the entity that owns it. 16:49:06

21 Q. Were there any programs in place at Uber
22 to conduct research to see if any protected data had
23 leaked into the public domain?

24 A. The biggest thing I would -- that I think
25 potentially that could get into an area like that 16:49:32

1 would be we would monitor GitHub, which is a source 16:49:36
2 code repository. The public GitHub. We would
3 monitor the public Web and -- you know, looking for
4 context that would be usually inadvertently dropped
5 out of there by an engineer, et cetera. 16:50:00

6 Q. Did you ever -- looking at that sentence,
7 do you agree that little, if any, protected data or
8 technical information regarding Waymo has leaked
9 into the public domain?

10 A. To the best of my knowledge, we've never 16:50:31
11 run across any -- anything that I would consider
12 protected data through something like our GitHub
13 public monitoring or web scraping.

14 Q. Let me ask you to turn to page 627.
15 Actually, just for context, please turn to 626. And 16:50:55
16 you'll see this references is a two-prong collection
17 method. Prong 1 is "Establish and maintain the
18 baseline." And 2 refers to "Internal resources."

19 And then, under 2, it says, "In order to
20 build the subject matter expertise necessary to 16:51:23
21 drive collection, SSG would like to meet on a
22 semi-routine basis with our own AV experts at
23 Iden I, Iden J, and elsewhere."

24 Do you know who those companies are?

25 A. I don't know if they are -- if they are 16:51:37

FEDERAL CERTIFICATE OF DEPOSITION OFFICER

I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby declare:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn pursuant to Section 30(f)(1) of the Federal Rules of Civil Procedure and the deposition is a true record of the testimony given by the witness;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to text under my direction;

--X--- That the witness was requested to review the transcript and make any changes to the transcript as a result of that review pursuant to Section 30(e) of the Federal Rules of Civil Procedure;

----- No changes have been provided by the witness during the period allowed;

----- The changes made by the witness are appended to the transcript;

----- No request was made that the transcript be reviewed pursuant to Section 30(e) of the Federal Rules of Civil Procedure.

I further declare that I have no interest in the event of the action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

WITNESS my hand this 26th day of December, 2017.



ANRAE WIMBERLEY, CSR NO. 7778

EXHIBIT L

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 3:17-cv-00939-WHA

WAYMO LLC,)
Plaintiff,)
)
v.)
)
UBER TECHNOLOGIES, INC.;)
OTTOMOTTO LLC;)
OTTO TRUCKING,)
Defendants.)

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF
JAKE NOCON

DATE TAKEN: DECEMBER 19, 2017

REPORTED BY:
PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 2771324

Pages 1 - 273

Page 1

1 Did this happen outside the United 09:57:36
2 States? 09:57:38
3 A. No, it did not. 09:57:39
4 Q. Okay. 09:57:39
5 So in terms of any human 09:57:40
6 surveillance that you performed, that was 09:57:41
7 exclusively within the United States? 09:57:43
8 A. Yes. 09:57:47
9 Q. Did you ever perform any 09:57:48
10 surveillance of any individuals who worked for 09:57:57
11 Waymo? 09:57:59
12 A. I never surveilled any individuals 09:58:06
13 that worked for Waymo. 09:58:06
14 Q. What types of surveillance did you 09:58:08
15 do on Waymo? 09:58:10
16 A. Our team was tasked with 09:58:16
17 conducting observations of Waymo's vehicles 09:58:17
18 from public places, but it was not specific to 09:58:19
19 any individual. 09:58:22
20 Q. Focusing on -- on that, who gave 09:58:34
21 you the instructions for any of the 09:58:44
22 surveillances that you did on Waymo? 09:58:47
23 A. If I recall correctly, it was Nick 09:58:50
24 Gicinto. 09:58:53
25 Q. And how many separate surveillance 09:58:53

C E R T I F I C A T E

I, PAUL J. FREDERICKSON, CA
Certified Shorthand Reporter No. 13164 and
WA Certified Court Reporter No. 2419, do
hereby certify:

That prior to being examined,
the witness named in the foregoing
deposition was by me duly sworn or affirmed
to testify to the truth, the whole truth and
nothing but the truth;

That said deposition was taken
down by me in shorthand at the time and
place therein named, and thereafter reduced
to print by means of computer-aided
transcription; and the same is a true,
correct and complete transcript of said
proceedings.

I further certify that I am not
interested in the outcome of the action.

Witness my hand this 20th day
of December 2017.



PAUL J. FREDERICKSON, CCR, CSR

WA CCR 2419 CA CSR 13164

Expiration date: March 31, 2018

EXHIBIT M

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 3:17-cv-00939-WHA

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC;

OTTO TRUCKING,

Defendants.

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF

NICHOLAS GICINTO

DATE TAKEN: DECEMBER 21, 2017

REPORTED BY:

PAUL J. FREDERICKSON, CCR, CSR

JOB NO. 2771353

Pages 1 - 338

Page 1

1 A. It appears to be a philosophical 13:18:30
2 approach to looking at the autonomous vehicle 13:18:33
3 competitive landscape and -- from a collection 13:18:37
4 standpoint. 13:18:41

5 Q. And do you see in the next 13:18:42
6 paragraph, it says: 13:18:43

7 "The primary collection 13:18:44
8 methodologies will be open-source and HUMINT 13:18:45
9 and will be conducted by assets, both internal 13:18:48
10 employees and external vendors"? 13:18:52

11 A. I see that. 13:18:54

12 Q. And did you have understanding 13:18:56
13 that Uber's primary collection methodologies in 13:18:59
14 terms of gaining competitive intelligence were 13:19:06
15 the things that are listed here? 13:19:07

16 A. No, I disagree with that. I mean, 13:19:12
17 this strategy or this -- this document here, 13:19:13
18 what was outlined, was never actually carried 13:19:17
19 out. 13:19:21

20 Q. You haven't read the whole 13:19:21
21 document yet, have you? 13:19:22

22 A. I haven't read the whole document, 13:19:23
23 but insofar as what you've pointed out to me, 13:19:25
24 these are not things that were -- that were 13:19:28
25 undertaken. 13:19:30

1 And one of the individuals -- the 14:37:28
2 first individual we interacted with as a 14:37:33
3 vendor, who we later called [REDACTED], traveled to 14:37:38
4 [REDACTED] in response to the requirements that Ric 14:37:41
5 Jacobs drafted. 14:37:45

6 The information itself wasn't -- 14:37:45
7 wasn't particularly earth-shattering, but the 14:37:49
8 quality of the writing, the quality of the 14:37:54
9 assessment, was at such a higher level of -- of 14:37:57
10 what -- what the business was used to seeing, 14:38:01
11 that it was clear that we were working with a 14:38:04
12 vendor that had just a higher level of 14:38:07
13 expertise than what the business had been used 14:38:11
14 to working with. 14:38:13

15 Q. Other than what we've discussed 14:38:14
16 today with respect to the surveillance of [REDACTED] 14:38:16
17 and Waymo vehicles, are there any other 14:38:20
18 activities you can recall that were engaged in 14:38:24
19 by these folks that you call [REDACTED] that were 14:38:28
20 hired by your group with respect to collecting 14:38:32
21 information about competitors in the AV market? 14:38:39

22 A. I don't recall those individuals 14:39:07
23 engaging in any other collection related to AV 14:39:11
24 besides what we previously discussed. 14:39:14

25 MR. KAPGAN: Do you want to take a 14:39:16

1 chain category? 16:58:02

2 A. Hypothetically it would have been 16:58:05

3 for that. But, again, we didn't engage in 16:58:07

4 supply chain research, so none of the money 16:58:09

5 went to that. We did engage in some sourcing 16:58:11

6 activities, as I mentioned, related to a couple 16:58:14

7 of entities, neither of which were Waymo or 16:58:18

8 Google. 16:58:22

9 Q. Did the ATG group specify that 16:58:26

10 efforts should be taken with respect to [REDACTED] 16:58:28

11 [REDACTED] with 16:58:31

12 respect to the autonomous vehicle competitors? 16:58:33

13 A. They listed those as areas of 16:58:36

14 interest. 16:58:37

15 Q. All right. 16:58:40

16 Was any money out of the [REDACTED] 16:58:50

17 [REDACTED] budget spent on focusing on 16:58:52

18 Google with respect to the [REDACTED]? 16:58:57

19 A. No. 16:58:57

20 Q. Was any of the [REDACTED] 16:59:00

21 budget focused on Google with respect to 16:59:02

22 [REDACTED]? 16:59:06

23 A. No. 16:59:06

24 Q. Was any of the [REDACTED] 16:59:08

25 budget that was approved for 2017 focused on 16:59:10

1 Google with respect to [REDACTED]? 16:59:15

2 A. Yes. 16:59:15

3 Q. Tell me what you know about that. 16:59:21

4 A. The -- this budget funded our 16:59:24

5 public observation activities in the Phoenix 16:59:27

6 area as we previously discussed. 16:59:30

7 Q. And is that the only activity with 16:59:32

8 respect to Google that was -- which came under 16:59:35

9 this [REDACTED] budget? 16:59:42

10 A. Yes. 16:59:42

11 Q. Was there any other budget in the 16:59:45

12 SSG Group that related to activities focused on 16:59:47

13 Google for 2017? 16:59:49

14 A. No. 16:59:51

15 Q. What about for 2016? 16:59:51

16 A. No. 16:59:51

17 Q. Was all of the budget for 2000 -- 17:00:09

18 first of all, how much budget was there for 17:00:10

19 2016 with respect to autonomous vehicles in 17:00:13

20 your group? 17:00:15

21 A. We didn't have a budget. We 17:00:16

22 weren't funded by ATG in 2016. 17:00:18

23 Q. Okay. 17:00:20

24 You didn't have a budget at all? 17:00:23

25 A. I had a -- I had a budget, but I 17:00:24

C E R T I F I C A T E

I, PAUL J. FREDERICKSON, CA
Certified Shorthand Reporter No. 13164 and
WA Certified Court Reporter No. 2419, do
hereby certify:

That prior to being examined,
the witness named in the foregoing
deposition was by me duly sworn or affirmed
to testify to the truth, the whole truth and
nothing but the truth;

That said deposition was taken
down by me in shorthand at the time and
place therein named, and thereafter reduced
to print by means of computer-aided
transcription; and the same is a true,
correct and complete transcript of said
proceedings.

I further certify that I am not
interested in the outcome of the action.

Witness my hand this 22nd day
of December 2017.



PAUL J. FREDERICKSON, CCR, CSR
WA CCR 2419 CA CSR 13164
Expiration date: March 31, 2018